

Congress of the United States

Washington, DC 20515

October 20, 2003

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

The Honorable Tommy G. Thompson
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Bolten and Mr. Secretary:

The National Institutes of Health (NIH) is the U.S. government's premier medical research institution and the largest source of public funding for medical research in the world. The 27 major institutes and centers that constitute NIH have housed the nation's first chemotherapy program, shared in the discovery of the Human Immunodeficiency Virus, and led the effort to map the human genome. Yet today the scientific mission of this vital institution is at risk because of a misguided privatization plan that meddles with scientists, opens the door to unnecessary security threats, and seriously undermines morale and productivity.

This privatization plan, part of the Circular A-76 "competitive sourcing" initiative, originated at the direction of President Bush and the Office of Management and Budget in 2001. While the A-76 process is intended to promote government efficiency, the plan is having the opposite effect at NIH. Over 4,000 federal jobs at NIH, including many important scientific and support positions, are on the chopping block. The agency will divert over \$15 million to determine whether to privatize federal jobs. And NIH employees have already lost more than 100,000 hours preparing for possible privatization.

We have also learned that NIH senior leadership has been denied the ability to adapt the implementation of Circular A-76 to the agency's unique circumstances. For example, because the agency's highly specialized fire department is considered a national resource "in the handling of chemical, biological, and radiological events," NIH officials sought to classify the firefighters as core public employees who could not be privatized. This request, however, was rejected by the Bush Administration.

Scientists both inside and outside NIH are alarmed by what is happening. At a recent joint House-Senate hearing on the future of NIH, former NIH director Dr. Harold Varmus said that the A-76 process is sending a "wave of unnecessary anxiety and bureaucratic duplication to the agency." Dr. Harold Shapiro of the Institute of Medicine said it was "on the whole not well thought out."

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In just two days, NIH is expected to announce whether it will privatize a range of positions across the campus. We request that both of you direct NIH to suspend this process today. NIH should be given the opportunity to improve its efficiency in a way that does not jeopardize its scientific mission.

The rest of this letter explains these concerns in more detail.

Circular A-76

In 1966, the Bureau of the Budget, the predecessor agency to the Office of Management and Budget, developed a policy for determining when public sector jobs can be performed more efficiently by the private sector. The policy, known as Circular A-76, instructed federal agencies to assess whether private contractors should take over certain functions from government employees.¹ Federal administrators, including those at NIH, have implemented Circular A-76 with varying degrees of intensity for more than 35 years.

Soon after taking office, however, President Bush moved to make aggressive implementation of Circular A-76 a cornerstone of his "President's Management Agenda" for the federal government. Under the leadership of Mr. Bolten's predecessor, Mitch Daniels, OMB rewrote Circular A-76 to hasten the privatization process and radically expanded the number of government positions open to contractors.² OMB Director Daniels asked agencies to directly privatize, or study for privatization, more than 425,000 federal jobs.³

Serious concerns have been raised about this Administration's zealous approach to Circular A-76. While the President has stated that he simply wants to "open government to the discipline of competition,"⁴ the Administration has not been able to demonstrate significant cost savings from this initiative. Privatization efforts seem to be pursued without regard for extenuating circumstances. For example, the Navy planned to privatize the jobs of mentally handicapped adults who are longtime employees at the National Naval Medical

¹L. Halchin, *The Federal Activities Inventory Reform Act and Circular A-76*, Congressional Research Service (May 27, 2003).

²*OMB Chief Describes Sweeping Agenda for A-76 Competitions*, Government Executive (Apr. 19, 2001) (online at <http://www.govexec.com/dailyfed/0401/041901p1.htm>).

³*The Daniels Decree*, Government Executive (July 1, 2001).

⁴Executive Office of the President, *The President's Management Agenda* (Aug. 2001).

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Center in Bethesda. This plan appears to have been dropped only after a visit from Rep. Van Hollen and news coverage by the *Washington Post*.⁵

In September, the House of Representatives voted to block the President's revision of the rules governing the A-76 process.⁶ This prompted a veto threat from the President's advisors.⁷

The Impact on NIH

While the Administration's implementation of Circular A-76 raises serious questions for the entire federal government, its impact on NIH has been particularly striking. In 2000, under the Clinton Administration, NIH listed 2,514 positions as commercial in nature, with only 106 immediately eligible for possible privatization under Circular A-76.⁸ In 2001, under the Bush Administration, NIH's list of commercial positions jumped to 9,319, with 2,008 eligible for immediate privatization.⁹ This is a nearly fourfold increase in the number of commercial positions, and a nearly twentyfold increase in the number of positions available for immediate privatization. NIH announced in 2003 that it would let private contractors submit bids to take over 4,600 positions, about one-quarter of the total workforce, by the end of fiscal year 2005.¹⁰

No one would take issue with the goal of making NIH more efficient. But scientists inside and outside of NIH have indicated that this aggressive approach to Circular A-76 is undermining the advancement of science.

⁵*In Bethesda, Hiring Policy, 'Competitive Sourcing' Clash*, Washington Post (Oct. 14, 2003).

⁶*House Passes 4.1% Raise for Federal Employees*, Washington Post (Sept. 10, 2003).

⁷*Official Says Administration Was Outfoxed on Outsourcing*, Washington Post (Sept. 15, 2003).

⁸Department of Health and Human Services, *Major Functional Areas by OPDIV, Showing Commercial vs Inherently Governmental* (2000); National Institutes of Health, *2000 Fair Act Inventory* (2000).

⁹National Institutes of Health, *2001 Fair Act Inventory* (2001).

¹⁰C. Leasure, *Memo to All NIH Employees: Competitive Sourcing Reviews in Fiscal Year 2004* (July 9, 2003) (online at <http://a-76.nih.gov/A-76allhandsmemo7-9-03.pdf>).

As part of the initiative, NIH is considering privatizing hundreds of scientific positions. In July, NIH announced plans to allow private companies to bid in fiscal year 2004 for control of the postdoctoral research fellows program, which employs approximately 900 scientists on the NIH campus.¹¹ NIH also proposed privatizing investigators in Senior Scientist Category 2, who are currently selected by institute directors.¹² These two proposals would allow outside contractors to select many of the key scientists on the NIH campus. After significant internal dissent and congressional inquiries, NIH told employees in September that it would not privatize these positions this year.¹³ These plans, however, may go forward in future years.

Many positions integral to science at NIH remain scheduled for possible privatization this year. Over the next several months, NIH plans to consider privatizing veterinary and animal support, visual and medical arts, laboratory safety, committee management support, and information technology.¹⁰ Also on the list are positions involving NIH's laboratory, radiology, EKG, respiratory therapy, and social work services.¹⁴ Many employees in these fields have unique expertise in support of highly specialized research.

The leaders of NIH have not had success in protecting key support positions from privatization. For example, NIH formally sought to exempt its highly specialized fire department from the A-76 process, arguing:

The NIH Fire Department is recognized as a best practice organization in handling of chemical, biological, and radiological events. They are regularly called on to train others in event response. They are one of the few hazardous event response teams nationally that are trained to respond and decontaminate mixed substance events. This readiness is maintained through a close and enduring relationship between the NIH scientific programs the occupational safety and health specialists and the fire

¹¹*Id.*

¹²*Id.*

¹³National Institutes of Health, E-mail communication to House Government Reform Committee minority staff (Sept. 24, 2003).

¹⁴National Institutes of Health, *NIH Classification of Functions* (Aug. 15, 2003).

department. NIH does not feel it could guarantee this level of knowledge, continuity, and program integration through a contract mechanism.¹⁵

This appeal, however, was rejected by the Bush Administration. NIH will soon seek private bidders to replace its fire department.¹⁶

Other support positions can also be important for the integrity of NIH research. For example, NIH obtained in 2001 a detailed, independent comparison of NIH locksmiths to those who work at the Smithsonian Institution, Johns Hopkins University, the University of Virginia, and other comparable institutions. After hearing from an expert at Johns Hopkins that “locksmith services are best provided by an in-house staff for reliability, security, and control,” this analysis concluded that NIH should “continue to fulfill its locksmith needs with an in-house work force.”¹⁷ Nonetheless, less than two years later, NIH decided to study again whether the locksmiths should be privatized. The decision is due later this week.

Morale and Productivity

The dramatic application of Circular A-76 at NIH has had a demoralizing effect. To respond to a privatization review, an employee typically spends days detailing his or her job responsibilities so that a description of the work can be put out for bid. Then the employee waits for months to find out whether his or her job will be lost through privatization. During this extended period, productivity suffers, and recruitment for open positions becomes nearly impossible. Even if NIH ultimately rejects choosing a private contractor to replace a particular set of employees, as recently happened for staff who provide assistance with grants, the privatization review begins all over again within five years.¹⁸

¹⁵National Institutes of Health, *National Institutes of Health Consolidation of Facilities Management* (2003) (emphasis added).

¹⁶Office of Management and Budget, *Budget of the United States, Fiscal Year 2003, Health and Human Services*, 167 (Feb. 4, 2002) (online at <http://www.whitehouse.gov/omb/budget/fy2003/budget.html>).

¹⁷Linda T. Gilday and John F. Moran, *NIH Locksmith Operations: Examination of Outsourcing Potential* (Apr. 2001) (emphasis added).

¹⁸National Institutes of Health, *Competitive Sourcing (A-76) Q&A* (July 16, 2003) (online at <http://a-76.nih.gov/A76FAQ071603.doc>).

In recent months, the Bush Administration has asked many NIH employees to sign an “addendum” for their personnel files. This document is a pledge that the employee will “commit to achieve” administration policies, including successful implementation of the A-76 privatization process.¹⁹ This request has further undermined morale. After being told to sign the pledge or face dismissal, several employees protested, leading HHS Secretary Tommy Thompson to clarify that “refusing to sign the form will not place anyone at risk.”²⁰

To his credit, Secretary Thompson has indicated that NIH employees may be offered alternative jobs if their positions are lost to privatization.²¹ This statement, however, is no consolation to longtime employees who want to remain productive in their chosen fields.

Undermining the NIH Mission

It seems likely that implementation of Circular A-76 will backfire: it will end up costing NIH more money than it saves. The agency is spending approximately \$3,500 per position reviewed to conduct A-76 studies in fiscal year 2003, a figure that will rise to \$6,000 per position reviewed in fiscal year 2004.²² Much of this money is going to outside companies, such as Warden & Associates, which holds a contract worth over \$3 million.²³

With an estimated 4,600 jobs eligible for privatization, total direct costs will likely exceed \$15 million. In addition, NIH employees have already spent approximately 114,000 hours of staff time on A-76 reviews.²⁴ In the short term, because Congress did not set aside appropriations for A-76 implementation, NIH will have to take these resources away from

¹⁹*NIH Employees Are Asked to Sign Off on Bush Administration’s Goals*, Washington Post (June 13, 2002).

²⁰Letter from Secretary Tommy G. Thompson to Rep. Chris Van Hollen (Aug. 18, 2003).

²¹Secretary Tommy G. Thompson, *Memorandum to Heads of Operating Divisions and Staff Divisions* (May 25, 2001).

²²National Institutes of Health, Fax communication to House Government Reform Committee minority staff (Aug. 29, 2003).

²³National Institutes of Health, E-mail communication to House Government Reform Committee minority staff (Oct. 15, 2003).

²⁴National Institutes of Health, *supra* note 22.

other priorities. In the long run, the costs of A-76 implementation are likely to exceed any savings from privatization.

It is no surprise that leading scientists have sharply criticized the privatization efforts at NIH. At a recent joint House-Senate hearing on the future of NIH, former NIH director Dr. Harold Varmus said the A-76 process is sending a “wave of unnecessary anxiety and bureaucratic duplication to the agency.” Dr. Harold Shapiro, who led an Institute of Medicine panel on NIH, said it was “on the whole not well thought out.” He added:

My own view of the current initiatives coming out of OMB then through HHS to NIH is that they are threatening and threaten to undermine some of the vitality of the organization.²⁵

Today, the commentary of a senior scientist at the NIH, who wishes to remain anonymous, is being posted at www.politicsandscience.org. This scientist believes that the morale of NIH staff “has never seemed lower.”²⁶ Of the A-76 process, he writes:

Be assured that, if implemented, this is not a process that can be easily rolled back with a new political administration. It is not a process we can simply “wait out.” A-76 will change the basic operational structure of the NIH, and will be with us for a long time to come.²⁷

Conclusion

Historically, NIH has attracted wide political support from across the ideological spectrum. The pinnacle of NIH’s political success was the recent congressional action to double the agency’s annual budget from \$13.6 billion in fiscal year 1998 to \$27.2 billion in fiscal year 2003. Some may assume that this historic budget expansion means that nothing is amiss at the agency. Unfortunately, the additional dollars provide no protection against political interference. NIH’s future is jeopardized when political leaders fail to respect the

²⁵Hearing before the Senate Health, Education, Labor and Pensions Committee and House Energy and Commerce Committee, *Biomedical Research to Prevent and Cure Disease in the 21st Century: Matching NIH Policy with Science* (Oct. 2, 2003).

²⁶Anonymous, *I Am the NIH . . . and I Need Your Help* (Oct. 20, 2003) (online at www.politicsandscience.org).

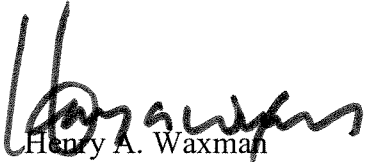
²⁷*Id.*

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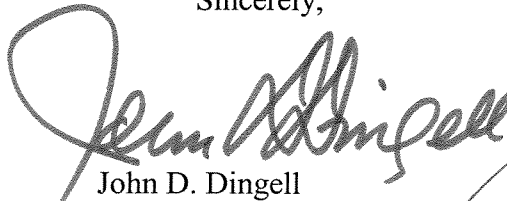
scientists and scientific processes needed to produce breakthrough treatments and other medical advances.

It is essential that the threat to NIH from the A-76 process be addressed immediately. Mr. Secretary, we urge you to assure that the integrity of science and scientists at NIH is respected. Mr. Bolten, we ask that you suspend A-76 implementation at NIH today. NIH leadership must be given the time and freedom to develop an approach to efficiency that does not risk the agency's scientific mission, security, or morale.

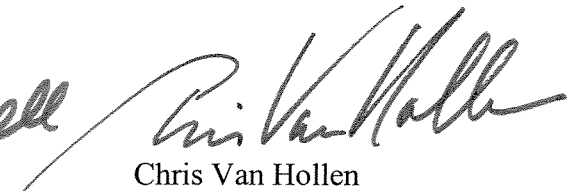
Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government
Reform
U.S. House of Representatives



John D. Dingell
Ranking Minority Member
Committee on Energy and
Commerce



Chris Van Hollen
Member
U.S. House of
Representatives



Barbara A. Mikulski
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Paul S. Sarbanes
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